

APPEAL NO. 022431
FILED OCTOBER 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 14, 2002. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits for the 10th quarter. Claimant appealed this determination on sufficiency grounds and also alleges that various procedural errors occurred. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer exhibited bias and asserts that the hearing officer should have granted his motion for recusal. The record does not reveal hearing officer bias and we perceive no reversible error. Claimant contends that the hearing officer erred in failing to make express fact findings regarding claimant's theory that he had no ability to work during the filing period in question. The Appeals Panel has encouraged hearing officers to make specific findings of fact addressing each of the elements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). See *e.g.*, Texas Workers' Compensation Commission Appeal No. 991973, decided October 25, 1999; Texas Workers' Compensation Commission Appeal No. 001153, decided June 30, 2000. While the hearing officer did not make such specific findings, he did indicate in Finding of Fact No. 10 that claimant had an ability to work and it is apparent from his decision and order that he determined that claimant had some ability to work. At the hearing, claimant noted in closing argument that, because there is evidence from Dr. K showing an ability to work, "claimant [had] a duty to look for work." In a report written about four months before the filing period began, Dr. K stated that claimant exhibited submaximal effort during a functional capacity evaluation and that, "at a minimum he tested in the light duty category of worker demands." It appears that claimant acknowledged that, because of Dr. K's report, he would not prevail on a theory of no ability to work at all. We perceive no reversible error in the failure to make express findings regarding the factors in Rule 130.102(d)(4) and we affirm the implied finding that there is a record that shows that the injured employee is able to return to work.

Claimant contends that the hearing officer misapplied the law in that he determined that claimant "spent less than one hour per week documenting job search contacts." However, the hearing officer could consider the number of hours claimant spent documenting job searches as a factor regarding good faith. It is apparent that the hearing officer considered the evidence regarding claimant's job search as a whole in making his determinations regarding good faith and we perceive no reversible error in this regard.

We also affirm the hearing officer's determination that claimant did not make a good faith effort to search for work commensurate with his ability to work. Although claimant contends that he had a job search plan and searched for work every week of the filing period, whether claimant's efforts in this regard amounted to good faith was a fact issue for the hearing officer to consider. The hearing officer could also consider in his capacity as fact finder whether claimant actually sought work within his restrictions, whether claimant filed applications for employment, and the amount of time claimant spent looking for work. We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge